

R. Ernest Montanari, Esq. (SBN 152209)
Brenna Daugherty, Esq. (SBN 221415)
MUSACCHIO & MONTANARI, P.C.
1280 Civic Drive, Suite 200
Walnut Creek, California 94596
Telephone: (925) 465-3950
Facsimile: (925) 465-3951
Email: emontanari@mmlawpc.com; bdaugherty@mmlawpc.com

Attorneys for Respondent, Financial Freedom Senior Funding Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSIENA BROWN

Petitioner,

VS.

FINANCIAL FREEDOM SENIOR FUNDING CORPORATION, A SUBSIDIARY OF INDYMAC BANK, F.S.B.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (“MERS”); FINANCIAL FREEDOM ACQUISITION, LLC; MTC FINANCIAL INC., dba TRUSTEE CORPS.; RICHARD J. REYNOLDS AND HYDEE J. MULICHAK; DOES 1 THRU 20

Respondents.

Case No.: 3:11-CV-02040-JSW
(S.F. Superior Ct. Case No. PES-10-293632)

**[PROPOSED] ORDER AND STIPULATION
FOR CONTINUANCE TO FILE
RESPONSIVE PLEADING TO PETITION**

The Honorable Jeffrey S. White

TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

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IT IS HEREBY STIPULATED by Petitioner Josiena Brown and Respondent Financial Freedom Senior Funding Corporation (hereinafter referred to as “FFSFC”), through their respective counsel of record stipulate as follows:

WHEREAS, Petitioner Josiena Brown (hereinafter referred to as “Petitioner”) filed her Petition for Instructions with the San Francisco County Superior Court – Probate Division on April 22, 2011 and service was effectuated on FFSFC by mail to an out-of-state location at 190 Technology Parkway, Suite 100, Norcross, Georgia 30092;

WHEREAS, FFSFC did not file a responsive pleading in State Court prior to removal of this action to Federal Court, which based upon service by mail to an out-of-state corporation, would have been due June 1, 2011;

WHEREAS, Respondent MTC Financial, Inc. (hereinafter “Respondent MTC”) filed a “Notice of Removal of Action Under U.S.C. § 1441(b)” on April 26, 2011, which removed the matter to the United States District Court for the Northern District of California. FFSFC was not served with the Notice of Removal as required by *Federal Rules of Civil Procedure, Rule 4(l)(1)*;

WHEREAS, FFSFC was not served the Notice of Removal by any other party and also was not served with Notice of Stay of Proceedings of the underlying state action in light of the removal to federal court by the Clerk of the San Francisco Superior Court. As such, FFSFC was just advised of the removal and subsequent actions taken in this case in Federal court;

WHEREAS, FFSFC would have been permitted to file a responsive pleading within seven (7) days after removal pursuant to *Federal Rules of Civil Procedure, Rule 81(c)(2)(C)*, had the requisite notice of removal been served on FFSFC;

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1 **WHEREAS**, Petitioner Brown filed a First Amended Petition for Federal Civil Rights
2 Violations and State Law Claims; Certification of Interest; Jury Demand on June 24, 2011. FFSFC was
3 provided a copy of the First Amended Petition via email on June 27, 2011, but FFSFC has not been
4 formally served by Petitioner.
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6 **WHEREAS**, FFSFC is willing to waive notice of removal and treat the email on June 27,
7 2011 of Petitioner Brown's First Amended Petition for Federal Civil Rights Violations and State Law
8 Claims; Certification of Interest; Jury Demand as properly effectuated service of same, in exchange for
9 Petitioner Brown accepting as timely the filing of FFSFC's initial pleading in this matter on or before,
10 July 18, 2011.
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12 **WHEREAS**, FFSFC will be filing a motion to dismiss with respect to the First Amended
13 Petition and has agreed a hearing date will be set after the motion to remand which is currently
14 scheduled for August 26, 2011.
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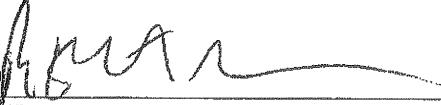
16 **THEREFORE, BASED UPON THE FOREGOING, IT IS HEREBY STIPULATED AS
17 FOLLOWS:**

18 The time for FFSFC to file a motion to dismiss to Petitioner's First Amended Petition for
19 Federal Civil Rights Violations and State Law Claims; Certification of Interest; Jury Demand shall be
20 extended up to, and including, July 18, 2011 and a hearing date shall be set after the motion to remand
21 currently scheduled for August 26, 2011.
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1 Dated: July 6, 2011

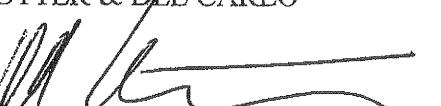
MUSACCHIO & MONTANARI, P.C.

2 By: 

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4 R. Ernest Montanari; Brenna Daugherty, Attorneys for
5 Respondent, Financial Freedom Senior
Funding Corporation

6 Dated: July 6, 2011

COTTER & DEL CARLO

7 By: 

8
9 Richard A. Canatella, Esq., Attorneys for
Petitioner, Josiena Brown

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11 PURSUANT TO STIPULATION, IT IS SO ORDERED,

12 Dated: July 8, 2011

13 By: 

14 The Honorable Jeffrey S. White

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